Petition

81-1475

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No._____

IN THE SUPREME COURT
OF THE UNITED STATES

October Term, 1981.

HENRY FOSTER TAYLOR, Petitioner,

vs.

COMMONWEALTH OF VIRGINIA, Respondent.

PETITION FOR WRIT OF CERTIORARI
From the Supreme Court of Virginia

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QUESTION PRESENTED

Should evidence seized in, or obtained as a consequence of, Virginia State Trooper Spencer's warrantless search of Henry Foster Taylor's truck on the night of January 30, 1980, be suppressed on the ground that Trooper Spencer conducted the search without probable cause in violation of the Fourth Amendment to the United States Constitution.

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OPINIONS BELOW

The opinion of the Supreme Court of Virginia is not officially reported at this time, but is unofficially reported at 222 Virginia Reports Reprints 750 (1981) and is printed in Appendix A hereto, infra, page 32. The letter opinion of the Circuit Court of Louisa County is printed in Appendix A hereto, infra, page 51.

JURISDICTION

The judgment of the Supreme Court of Virginia (Appendix A, infra, page 32) was entered on December 4, 1981. The jurisdiction of the Court is invoked under 28 U.S.C. §1257(3).

STATUTE INVOLVED

U.S. CONST. AMEND. IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

STATEMENT OF THE CASE

On the night of January 30, 1980, the Petitioner, Henry Foster Taylor, was driving an Avis rental truck near Triangle Plaza Shopping Center on State Route 22, not far from the intersection of U.S. Route 33 with Route 22 in Louisa County, Virginia. Henry Taylor stopped this vehicle for a brief period of time on Route 22, and went over to talk with some friends who were in an automobile parked in the A & P Parking lot of Triangle Plaza Shopping Center. While on routine patrol, Trooper P. T. Spencer of the Virginia State Police and Officer Kenny Harper of the Louisa County Sheriff's Department pulled up in Mr. Spencer's police cruiser behind this truck and began questioning Mr. Washington, who was seated on the passenger side of the truck. Mr. Taylor came running over to

move the truck, but he was not allowed to do so. In response to Trooper Spencer's questions, Mr. Taylor showed the officer the rental papers by which he claimed possession of the truck, offered to have his chauffeur's license and social security number verified by the Division of Motor Vehicles, and explained that his sister-in-law, Augusta Gaynelle Baird, had rented the vehicle for him and that was the reason why her name was on the rental papers.

Trooper Spencer did not accept this explanation and placed Mr. Taylor under arrest for unlawfully parking on a public highway. At this time, Trooper Spencer noticed that the truck appeared to be loaded since its rear springs were depressed on one side. In response to Trooper Spencer's questions, Mr. Taylor denied that the truck was loaded and

explained its appearance to the officer by saying it was always like that. Trooper Spencer asked Mr. Taylor for permission to search the enclosed rear cargo area of the truck. Mr. Taylor refused to open the cargo doors for the officer or give his permission for the doors to be opened, and he told the officer that if the officer did it himself he would be doing it against Mr. Taylor's will.

Trooper Spencer then placed Mr. Taylor and Mr. Washington in the custody of Officer Harper, who placed them in the back of the police cruiser, and radioed for police assistance. Several police officers and police cars arrived on the scene, and Trooper Spencer opened the rear of the truck where he found a large spool of aluminum wire. The Petitioner, Henry Taylor, and all those

with whom he had been speaking in the immediate area were then taken down to the Police Station and charged with Grand Larceny. Neither Trooper Spencer nor Officer Harper had been made aware prior to this incident of any alleged unlawful activity on the part of Mr. Taylor or any of the others arrested that evening, nor were they on the look-out for this particular rental truck for any reason. Neither of them searched Mr. Taylor at the scene of the search of the rental truck, and neither Mr. Taylor nor any of the others arrested were in reach of the rear of the rental truck when the doors were opened and the search took place.

Finally, throughout this incident, the rental truck was solely in the possession and control of the Petitioner, Henry Taylor. The record is very clear

that Gaynelle Baird rented the van at Henry Taylor's request, for Henry Taylor, and turned over complete possession and control of the Vehicle to Henry Taylor. Henry Taylor gave Gaynelle Baird the money for the rental of the truck, Ms. Baird gave Mr. Taylor the change back from this money, Ms. Baird gave Mr. Taylor the keys which were the sole means of control of this truck, and she gave him the rental papers executed by her at Avis.

In a timely manner before trial, Mr. Taylor filed a written Motion to Suppress all evidence obtained in the January 30, 1980 search of the Avis rental truck, and all leads to evidence derived from the search, including but not limited to the testimony of any and all individuals who were at the scene of the search and interrogated as a result

thereof. The Motion stated that the evidence sought to be suppressed was obtained in violation of the Fourth Amendment to the Constitution of the United States. An evidentiary hearing on this Motion was conducted on May 20, 1980, following which, on June 11, 1980, the Circuit Court of Louisa County denied the Motion. On September 8, 1980, the Circuit Court entered an Order sentencing Henry Foster Taylor to six months in jail, and a Notice of Appeal was filed to the Supreme Court of Virginia.

The appeal to the Virginia Supreme Court was timely pursued and, through his assignment of error, Mr. Taylor challenged the validity of the trial court's denial of his Motion to Suppress. By its decision of December 4, 1981, the

Supreme Court of Virginia upheld the trial court's denial of Mr. Taylor's Motion to Suppress.

REASONS FOR GRANTING THIS WRIT

In its opinion of December 4, 1981, the Virginia Supreme Court made it clear that the one dispositive issue in this case was whether State Trooper P.T. Spencer, Jr. had probable cause to search the 1978 model truck he encountered while on patrol in the Town of Louisa, Virginia, late in the evening of January 30, 1980. This dispositive issue was erroneously decided by the Virginia Supreme Court which held that probable cause to search existed. The probable cause determination was central to the case because the Fourth Amendment to the U.S. Constitution, as construed in Carroll v. United States, 267 U.S. 132 (1925), does not allow warrantless searches of motor vehicles unless probable cause to search and exigent circum-

stances, normally inferred from the mobility of motor vehicles, exist at the time the search is commenced. Since the existence of exigent circumstances has not been disputed here, the case turns on the determination that probable cause for Trooper Spencer's search did exist.

Defining what constitutes probable cause has been no easy task for courts, and recognizing when it exists has presented tremendous difficulty to law enforcement officers in the field. This is particularly true in the situation where, as here, an officer makes a warrantless search and no neutral magistrate reviews the officer's grounds for believing probable cause exists. The Court in Carroll, supra, noted that definitions of probable cause appear frequently in reported cases, and, after

examining a number of these, set out its own formulation:

> [T]he facts and circumstances within their (the arresting officers') knowledge and of which they had reasonably trustworthy information were sufficient in themselves to warrant a man of reasonable caution in the belief that intoxicating liquor was being transported in the automobile which they stopped and searched.

267 U.S. 132, 162 (1925). This standard was both confirmed and elaborated upon in the later case of Brinegar v. United States, 338 U.S. 160 (1949), which reviewed a probable cause determination made on facts quite similar to those presented in Carroll, supra. The Court in Brinegar stated:

> In dealing with probable cause, however, as the very name implies, we deal with probabilities. These are not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act ... "The

> substance of all the definitions" of probable cause "is a reasonable ground for belief of guilt." McCarthy v. De Armit, 99 Pa. St. 63, 69, quoted with approval in the Carroll opinion. 267 U.S. at 161. And this ... has come to mean more than bare suspicion.

338 U.S. 160, 175 (1949). The Brinegar Court recognized as troublesome the line between "mere suspicion and probable cause" and opined that the "line necessarily must be drawn by an act of judgment formed in the light of the particular situation and with account taken of all the circumstances." 338 U.S. 160, 176 (1949).

A number of key points essential to a careful review of the case at hand emerge from these cases and their discussions of probable cause:

> 1) Probable cause must exist at the time the search is commenced; the discovery of fruits or instrumentalities of crime during a search

is not a circumstance that may be considered in hindsight as contributing to the existence of probable cause.

2) The existence of probable cause is to be judged in practical, nontechnical terms and from the viewpoint of a man of reasonable caution.

3) The only circumstances to be considered in any probable cause determination are those within the knowledge of the law enforcement officer conducting the search or of which he has reasonably trustworthy information.

4) Probable cause is more than suspicion.

Mechanically applying these accepted standards to the facts of this case cannot yield any result; rather, the Court must consult its sound judgment and wisdom born of experience in applying the standards, and in the process, determine the result of this case and give renewed vitality to the standards

themselves. It is submitted that the facts of this case, when reviewed in the light of sound judgment and experience, and according to the applicable standards, do not establish any proper legal basis for Trooper Spencer's warrantless search of Henry Taylor's vehicle.

When Trooper Spencer first encountered Henry Taylor on January 30, 1980, he had absolutely no reason to believe that Mr. Taylor was engaged in any illegal undertaking, other than the possible traffic violation which Trooper Spencer stopped to investigate. The only reasonably trustworthy information or personal knowledge Trooper Spencer had, connecting Mr. Taylor with illegal activity, he acquired in the few moments before the search of Mr. Taylor's vehicle was conducted. This stands in stark contrast to the facts stated by

the Court in Carroll, supra and Brinegar, supra, where it was clear the law enforcement officers had good reason to know in advance of stopping the vehicles and conducting their searches that the drivers were engaged in illegal activity.

What information Trooper Spencer did acquire in the few moments preceding his warrantless search of Mr. Taylor's truck may have aroused his suspicions, but did not give him probable cause to search. Because Mr. Taylor did not have his driver's license with him, Trooper Spencer was unable to make a positive identification of Mr. Taylor. Mr. Taylor, however, gave the officer his true name, and the officer had no reason to believe Mr. Taylor was not one of the many law-abiding Virginia citizens who from time to time misplace or forget their drivers' licenses. Mr. Taylor

gave what the officer considered to be an unsatisfactory account of where he had been and where he was going. Mr. Taylor had no obligation to keep an accurate record of his movements that evening, though, so his vague responses could reasonably have denoted unfamiliarity with back roads and small town names rather than suspicious behavior. The officer also felt that Mr. Taylor was unable to account satisfactorily for his possession of the truck, but Mr. Taylor produced the rental papers for the truck and gave a reasonable and accurate explanation why the rental papers were made out in the name of his sister-in-law, Augusta Gaynelle Baird. In each of these instances, Mr. Taylor had done nothing to set himself apart from ordinary law-abiding citizens or to cause the officer to focus upon him as possi-

bly being engaged in illegal activity.

An additional circumstance which Trooper Spencer considered in determining to search Mr. Taylor's vehicle without a warrant was Mr. Taylor's denial that the truck was loaded. It had been the officer's observation that the truck body was leaning, from which he concluded it contained a heavy load. Mr. Taylor, however, explained to the officer that during the time he had had the truck, the truck body had always been leaning. While this explanation obviously failed to satisfy the officer, it nonetheless raised a question at the time about the officer's conclusion that the truck was loaded. The conflict between the officer's observations and Mr. Taylor's explanation might be said to justify some suspicion on the officer's part, but in the face of the offi-

cer's uncertain knowledge of whether cargo was on board Mr. Taylor's truck, it cannot be said that he had probable cause to search for evidence of crime.

The facts in Petitioner's case are remarkably similar to the facts stated in Preston v. United States, 376 U.S. 364 (1964), a case in which the United States Supreme Court was asked to review the reasonableness of a warrantless search upheld in the lower courts. The facts stated in the Preston opinion are:

> The police of Newport, Kentucky, received a telephone complaint at 3 o'clock one morning that "three suspicious men acting suspiciously" had been seated in a motorcar parked in a business district since 10 o'clock the evening before. Four policemen straightaway went to the place where the car was parked and found petitioner and two companions. The officers asked the three men why they were parked

there, but the men gave answers which the officers testified were unsatisfactory and evasive. All three men admitted that they were unemployed; all of them together had only 25 cents. One of the men said that he had bought the car the day before (which later turned out to be true), but he could not produce any title. They said that their reason for being there was to meet a truck driver who would pass through Newport that night, but they could not identify the company he worked for, could not say what his truck looked like, and did not know what time he would arrive. The officers arrested the three men for vagrancy, searched them for weapons, and took them to police headquarters. The car, which had not been searched at the time of the arrest, was driven by an officer to the station, from which it was towed to a garage. Soon after the men had been booked at the station, some of the police officers went to the garage to search the car and found two loaded revolvers in the glove compartment. They were unable to open the trunk and returned to the station, where a detective told one of the officers to go back and try to get into

> the trunk. The officer did so, was able to enter the trunk through the back seat of the car, and in the trunk found caps, women's stockings (one with mouth and eye holes), rope, pillow slips, an illegally manufactured license plate equipped to be snapped over another plate, and other items. After the search one of petitioner's companions confessed that he and two others - he did not name petitioner - intended to rob a bank in Berry, Kentucky, a town about 51 miles from Newport. At this, the police called the Federal Bureau of Investigation into the case and turned over to the Bureau the articles found in the car. It was the use of these articles, over timely objections, which raised the Fourth Amendment question we here consider.

376 U.S. 364, 365-366. While the narrow ground for decision in Preston, supra, was the Court's determination that the search and seizure were unreasonable because they took place at some time and distance removed from the initial police investigation, it was necessary

for the Court also to conclude that the police did not have probable cause to search the vehicle when they first came on the scene. There can be no doubt that the Court does not regard the facts in Preston, supra, as sufficient to give rise to probable cause for a warrantless vehicle search, for, in the later case of Chambers v. Maroney, 399 U.S. 42 (1970), reh. den. 400 U.S. 856, the Court stated:

> In Preston, supra, the arrest was for vagrancy; it was apparent that the officers had no cause to believe that evidence of crime was concealed in the auto.

399 U.S. 42, 46.

Every case must be judged on its own unique facts, and the decision of the Court in Preston, supra, is not controlling in this case. Preston, however, is helpful for illustrating how

the abstract principles governing probable cause determination operate in a factual context quite similar to the case at hand. The inability of the persons arrested in Preston to account satisfactorily for their presence in a business district in the early hours of morning, to say when they would be moving on, to describe who they were waiting for, to produce title to their car, or to give direct answers to all police questions, did not, in the Court's view, furnish probable cause for a warrantless search of the car by police. The line between suspicion and probable cause was not crossed in Preston, despite a substantial accumulation of suspicious circumstances.

The Petitioner here, Henry Foster Taylor, respectfully submits that the Court must, after reviewing the facts

and circumstances confronting Trooper Spencer at the time he commenced his warrantless search of Mr. Taylor's truck, conclude that Trooper Spencer acted on mere suspicion, rather than on probable cause, which the law requires. The warrantless search thus being without proper legal basis, the evidence obtained in the search or as a consequence of it must be suppressed in accordance with Mr. Taylor's timely filed Motion to Suppress.

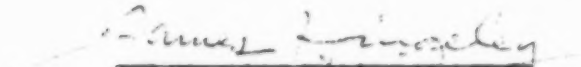
Despite the trial court's decision that Mr. Taylor did not have standing to challenge the validity of the warrantless search of his vehicle, it is apparent from the facts that he did have proper standing in law, in accordance with the principles set forth in Jones v. United States, 362 U.S. 257 (1960) and Rakas v. Illinois, 439 U.S. 128 (1970) and cases

cases therein cited. Mr. Taylor's standing is further demonstrated by the fact that the Virginia Supreme Court, in its opinion in this case, (printed in Appendix A, infra, p. 32) decided Mr. Taylor's appeal to that Court on the merits and without one mention of the standing issue.

CONCLUSION

For the foregoing reasons this petition for a writ of certiorari should be granted.

Respectfully submitted,



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February 2, 1982

Appendix

OPINION OF THE SUPREME COURT OF VIRGINIA

HENRY F. TAYLOR

v. Record No. 801978

COMMONWEALTH OF VIRGINIA

OPINION BY JUSTICE A. CHRISTIAN COMPTON
December 4, 1981

FROM THE CIRCUIT COURT
OF LOUISA COUNTY
F. Ward Harkrader, Jr., Judge

A jury found defendant Henry F. Taylor guilty of grand larceny and fixed his punishment at six months in jail plus a fine of $500. He appeals the trial court's September 1980 judgment of conviction confirming the jury's finding and sentencing defendant in conformity with the verdict.

The sole issue on appeal is whether the court below properly denied defendant's motion to suppress evidence

discovered as the result of a warrantless search of a truck standing on a public highway. More precisely, the dispositive inquiry is whether there was probable cause to believe the vehicle contained the fruits of a crime.

Just before midnight on January 30, 1980, State Trooper P. T. Spencer, Jr., was patrolling in his police cruiser on Route 33 in the Town of Louisa. Town Officer Kenny James Harper was riding with Spencer. Snow was falling and the weather conditions were "nasty." As Spencer drove east near the intersection of Routes 33 and 22, he observed a two-and-one-half-ton truck with an enclosed body containing no exterior lettering, parked headed west on Route 22. The truck entirely blocked the westbound lane with its left wheels within one

foot of the double solid lines marking the center of the highway. Spencer turned, drove through a shopping center parking lot, "came in behind" the large white and silver truck, and stopped to its rear. The truck's "motor was running and the lights were on," but no "emergency flashers" were in use.

As the trooper alighted from his vehicle, he observed that no person was on the "driver's side" of the truck cab. Approaching that side, Spencer found LeRoy Washington sitting on the "passenger's side" of the vehicle. When asked by the officer "what the problem was," Washington replied that the driver was talking to friends near a Ford Mustang automobile parked in the shopping center lot. Spencer looked across the road, observed the Mustang about 100-200 feet

away, and saw defendant Taylor walk from the car through the lot towards him.

Taylor proceeded across the road to where Spencer was standing beside the truck. Upon being asked by the Officer "what the problem was," defendant said he had stopped to converse with "friends" and that he was preparing to "move on." The trooper asked Taylor for his operator's license; he replied that he had none "with him." Spencer asked defendant "if he had any identification;" the accused said he did not. The officer asked Taylor who owned the truck; defendant replied his sister-in-law had rented the truck. Upon Spencer's request for "the rental papers," defendant handed him a carbon copy of an Avis-Rent-A-Car "bill." The only handwriting legible in any of the numerous

blank spaces on the pre-printed form was the signature "Gaynelle Baird." Spencer testified that Taylor "had nothing with him to indicate who he was or that he was supposed to have possession of the vehicle."

The trooper then inquired of defendant "where he was coming from"; Taylor replied he did not know. He also said he "didn't know where he was going." The officer asked how defendant acquired possession of the truck; Taylor responded that "he just picked it up on [the] side [of] the road and did not know exactly where."

The officer then observed that the 1978-model truck appeared to be in good mechanical condition. But when he looked at the left rear wheels, the truck's springs on the left side were

depressed to th point that the truck body was almost touching the left rear tires. At that location the highway from side to side was level. The officer then asked defendant "what was in the truck;" the accused responded "it was empty." When Spencer called the truck's tilt to defendant's attention, Taylor said "it was always like that." From his police experience in weighing vehicles, the trooper knew that the truck had "an exceptional amount of weight" on the left side. Spencer also noticed that the truck had a hydraulic lift on the rear which, he said, "is ideal for stealing something."

The officer then placed defendant under arrest for the traffic infraction of stopping a motor vehicle on a public highway in such a manner as to impede

or render dangerous the use of the highway by others. Code §§ 46.1-248 and 16.01. The trooper put defendant in the custody of Town Officer Harper who had remained at the police vehicle.

Spencer returned to the truck cab and talked to Washington, who also had no operator's license and no identification, also did not know where he and defendant had come from, also was unaware where they had "picked up" the truck, and also claimed the truck was empty. Washington was then taken back to the police car so the town officer could "watch" him. Because he was confronted with "two extremely nervous individuals," Spencer asked Harper to call by radio for additional officers "to take care of" the individuals, five in number, who were at the Mustang in the parking lot.

Realizing the police on the scene were outnumbered seven to two and that the five persons at the Mustang were friends of both defendant and Washington, the trooper, describing the circumstances as "a very volatile situation," decided to examine without a warrant the inside of the truck's rear compartment. Spencer said that, based on his experience of 11 years as a police officer, he was "sure" the vehicle contained stolen property. He also testified that he felt it was important to conduct the search at that time before the individuals in the Mustang could drive away. After defendant refused to comply with Spencer's request to open the rear of the truck, the trooper raised the unlocked rear door.

Upon looking into the compartment, Spencer saw a yellow flashlight and a

red "ton and a half come-along," described as a type of block and tackle used to move heavy equipment. He also observed at the left front corner of the storage area a large wooden spool wrapped with new, heavy aluminum wire, which, upon investigation, was found to belong to the Virginia Electric and Power Company. The wire, having a steel core, was about 6000 feet long, weighed about 3000 pounds and was valued in excess of $2100. The spool was standing on its rims and was being braced by a wooden site sign from a VEPCO storage facility located near Mineral in Louisa County.

Shortly after Spencer had completed his examination of the rear of the truck, a number of additional officers arrived. The seven individuals at the scene were

arrested and charged with larceny of the wire.

Subsequent investigation and the evidence revealed that earlier during the day in question defendant and one of the accomplices sent Gaynelle Baird, defendant's sister-in-law, to Charlottesville with $100 cash to rent a truck for them. They told her the truck was to be used to haul furniture. After completing the transaction at the Avis Company, Baird handed the keys to the truck and the rental receipt to defendant. By prearrangement, the group of seven men arrived at the storage facility, an open field, in the Mustang and the truck between 8:00 p.m. and 10:00 p.m. to steal the wire. After laboring about one and one-half hours at the site, the crew was finally able manually to hoist one spool of wire

from the ground into the truck; they tried to employ the hydraulic lift but the weight of the wire prevented its use. The two vehicles were driven from the scene of the crime directly to Louisa where the arrests took place.

Following a pretrial hearing, the trial court overruled defendant's motion to suppress all evidence obtained during the search of the truck and all other evidence derived from the alleged illegal search. On appeal, defendant argues the lower court erred because the warrantless search of the rented vehicle was illegal as not justified by any exception to the Fourth Amendment warrant requirement. We do not agree; we hold the officer acted upon probable cause in exigent circumstances.

One of the established exceptions to the warrant requirement is that if a

search without a warrant is made of an automobile or other vehicle on the highway upon probable cause and if it is not practicable to secure a warrant because the motor vehicle can be quickly moved out of the locality or jurisdiction in which the warrant must be sought, the search is valid. Carroll v. United States, 267 U.S. 132, 249, 153 (1925). In this case, defendant understandably does not dispute the fact that exigent circumstances were present at the time. Instead, he contends the officer lacked probable cause to search the truck.

The legal standard of probable cause, as the term suggests, relates to probabilities that are based upon the factual and practical considerations in everyday life as perceived by reasonable and prudent persons. The presence or absence of

probable cause is not to be examined from the perspective of a legal technician. Rather, probable cause exists when the facts and circumstances within the officer's knowledge, and of which he has reasonably trustworthy information, alone are sufficient to warrant a person of reasonable caution to believe that an offense has been or is being committed. Draper v. United States, 358 U.S. 307, 313 (1959); Schaum v. Commonwealth, 215 Va. 498, 500, 211 S.E. 2d 73, 75 (1975). In order to ascertain whether probable cause exists, courts will focus upon "what the totality of the circumstances meant to police officers trained in analyzing the observed conduct for purposes of crime control." Hollis v. Commonwealth, 216 Va. 874, 877, 223 S.E.2d 887, 889 (1976).

In articulating his contention that probable cause was lacking, defendant says that, admittedly, the officer could "guess" the truck was loaded based on the depressed springs. However, defendant argues, there was "nothing connecting the fact that it was loaded to the fact that it was loaded with contraband as opposed to furniture or other legal material." Defendant notes that neither Trooper Spencer nor Officer Harper had been made aware of any alleged unlawful activity by defendant or his accomplices, other than the improper stopping of the vehicle. He points out that the police were not on the lookout for these individuals or this particular truck. Defendant contends the "sole basis" for the search was the belief the truck was loaded with "something" and defendant's

denial that it was, in fact, loaded. He argues that Trooper Spencer's "suspicion" that the truck contained stolen goods was "clearly no more than a hunch on his part" and factually is insufficient to establish probable cause. We disagree with defendant's analysis of the evidence.

At this appellate stage of the proceedings we examine the evidence in the light most favorable to the Commonwealth. From that perspective, we turn to the facts and consider what the totality of these circumstances meant to a police officer trained to interpret human conduct for the purpose of law enforcement.

Trooper Spencer was confronted at night in "nasty" weather with an unmarked truck blocking an entire travel lane of a public highway. The truck had

its motor running and its lights were burning. It was in apparent good mechanical condition, equipped with a hydraulic lift that was "ideal for stealing something." Both occupants were "extremely" nervous. They professed to have no operator's licenses and identification. They said they did not know where they had been or where they had obtained possession of the vehicle. The document offered to corroborate the fact the vehicle was leased to defendant's relative furnished no information about the rental; that fact was apparent from a mere glance at the paper. The occupants maintained that the vehicle was empty; yet it obviously was loaded. Near the truck and its occupants was a group of five "friends," congregated around another motor vehicle,

who remained aloof during questioning of defendant and Washington. As the trooper viewed the situation, it was "very volatile" and "the vehicle was under extreme suspicious circumstances."

We conclude that those facts, taken as a whole in that setting as viewed by a trained police officer were sufficient to believe the truck probably contained stolen property. See Adkins v. Commonwealth, 218 Va. 945, 948, 243 S.E.2d 205, 207 (1978).

The case of Matthews v. Commonwealth, 218 Va. 1, 235 S.E.2d 306 (1977), relied on by defendant, is inapposite. There, a state trooper stopped the defendant for a traffic violation. While talking to the motorist, the officer observed a pack of cigarette wrapping paper on the floorboard of defendant's car. After examining the paper, the trooper looked

further and discovered a folded brown paper bag tucked beside the driver's seat. Upon picking up and opening the bag, the officer discovered a quantity of marijuana.

We reversed defendant's conviction for possessing the substance, holding the search and seizure of the bag was illegal. We held the trooper lacked probable cause to believe defendant possessed marijuana. We noted that the police officer made "some connection" between the cigarette papers, sometimes used for illegal purposes, and the brown bag. We said, however, that "the connection was not combined with any other circumstance which might have justified a rational belief that the bag contained contraband drugs." 218 Va. at 3, 235 S.E.2d at 307.

But in the present case, contrary to defendant's argument, the obvious fact, denied by the occupants, that the vehicle was loaded was combined with the many other circumstances that we have enumerated to justify a rational belief that the truck contained fruits of a crime.

For these reasons the judgment appealed from will be

Affirmed.

LETTER OPINION OF JUNE 11, 1981
IN THE CIRCUIT COURT
OF LOUISA COUNTY

F. WARD HARKRADER, JR., JUDGE
Sixteenth Judicial Circuit
Box 799
Louisa, Virginia 23093

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June 11, 1980

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RE: Commonwealth vs. Henry F. Taylor

Gentlemen:

I compliment counsel on their thorough and helpful review of the law contained in their respective memoranda. In the opinion of the Court, this is an extremely close case on the question of standing. After a careful review of all

of the evidence, with particular consideration of the lack of ownership, lack of authorizing papers, absence from the vehicle at the time of its discovery in a position where it both constituted a traffic violation and a traffic hazard, the failure of Taylor to offer proof of indentification or authority for possession, the negative and ambiguous answers given by Taylor to the officer as to how he came into possession, and where he came into possession of the truck after he belatedly claimed possession, we hold the defendant, Henry Taylor, lacks standing to object to the search of the cargo section of the truck, and we consequently deny the motion to suppress.

Sincerely,

/s/ F. W. Harkrader, Jr.

F. W. Harkrader, Jr.,
Judge

FWHjr/bl

cc: Mr. Dean P. Agee, Clerk

JUDGMENT OF CONVICTION AND
SENTENCING OF SEPTEMBER 8, 1980
IN THE CIRCUIT COURT OF LOUISA COUNTY

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VIRGINIA:

IN THE CIRCUIT COURT OF COUNTY OF LOUISA

SEPTEMBER 8, 1980

COMMONWEALTH OF VIRGINIA
v. FELONY CASE NO. 1191
HENRY F. TAYLOR

This day came the Attorney for the Commonwealth, and Henry F. Taylor, who was convicted in this Court for a felony, to-wit: GRAND LARCENY VEPCO WIRE, by a jury, on the 12th day of June, 1980, appeared in Court in accordance with the conditions of his recognizance. And came also Charles F. Purcell, a discreet and competent attorney at law, practicing before the bar of this Court, retained by the defendant to represent him in this cause.

Whereupon the Probation Officer of this Court, Albert LaFave presented his report and was cross-examined by all counsel, and the Court on the same.

Thereupon the Court after review of the pre-sentence report having the cross-examination of the Probation Officer, and argument of counsel, find the said Henry F. Taylor, GUILTY of GRAND LARCENY, in accordance with the verdict of the jury.

And it being demanded of the defendant if anything for himself he had or knew to say why judgment should not be pronounced against him according to law, and nothing being offered or alleged in delay of judgment, it is accordingly the judgment of this Court that the defendant is hereby sentenced to confinement in the jail of this Court for the 6

months and pay a fine of $500.00 plus cost of Court.

Thereupon counsel for the defendant stated to the Court that he planned to appeal and that he was requesting bond.

Whereupon after hearing counsel the Court doth set bond at $7,500.00 cash or $15,000.00 property.

The Court certified that at all times during the trial of this case the accused was personally present and his attorney was likewise personally present and capably represented the defendant.

And the prisoner is released having made bond.

ENTER: /s/ F. W. Harkrader, Jr. Judge
F. W. Harkrader, Jr.

APPELLANT'S MOTION TO SUPRESS
FILED IN THE CIRCUIT COURT OF
LOUISA COUNTY

VIRGINIA:

IN THE CIRCUIT COURT OF LOUISA COUNTY

COMMONWEALTH OF VIRGINIA,
Plaintiff

v.

HENRY FOSTER TAYLOR,
Defendant

MOTION TO SUPPRESS

Comes now the Defendant, Henry Foster Taylor, by and through Counsel, and moves the Court to suppress all evidence obtained pursuant to the illegal search of a certain Avis Ford 2-Ton Truck while it was located near Triangle Plaza on U.S. Route 22, not far from the intersection of Routes 33 and 22 in Louisa County, Virginia on the 30th day of January, 1980, and further the Defendant, Henry Foster Taylor, by and through Counsel, moves the Court to

suppress all evidence derived from the above referenced illegal search and all leads to evidence derived from the above referenced illegal search, including but not limited to the testimony of any and all individuals who were at the scene of the above referenced illegal search and interrogated as a direct result thereof, the said evidence being unlawfully obtained in violation of the Fourth Amendment to the Constitution of the United States and its application in the State of Virginia.

HENRY FOSTER TAYLOR

By: /s/ Charles F. Purcell
Counsel

Charles F. Purcell
Attorney at Law
Purcell Building No. 1
Louisa, Virginia 23093

NOTICE

The Plaintiff will hereby take notice that the Defendant will move the Court as above set forth on Tuesday, May 20, 1980, at the hour of 3:00 p.m., or as soon thereafter as this matter may be heard, in the Circuit Court Room of the Louisa County Circuit Court.

CERTIFICATE OF SERVICE

Pursuant to Rule 28.5(b) of the United States Supreme Court I hereby certify that on the 2nd day of February, 1982, by my direction Susan S. Williams of Lawyers Printing Company, Suite B-115, 7th and Franklin Building, Richmond, Virginia mailed first class postage prepaid, from Richmond, Virginia three copies of the foregoing Petition for Writ of Certiorari to Alexander E. Conlyn, Assistant Attorney General for the Commonwealth of Virginia, Supreme Court - State Library Building, Richmond, Virginia 23219.

James Hingeley